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Letter dated 29 March 2006 from the President of the General Assembly addressed to the Chairman of the Fifth Committee

I have the honour to transmit to you herewith for the consideration of the Fifth Committee, as appropriate, a letter from the President of the International Narcotics Control Board dated 16 March 2006 (see annex).

(*Signed*) Jan **Eliasson**

* Reissued for technical reasons.

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Annex

Letter dated 16 March 2006 from the President of the International Narcotics Control Board to the President of the General Assembly

On behalf of the International Narcotics Control Board and with reference to the mandate of the Board under the three international drug control conventions, I have the honour to refer to our meeting of 21 July 2005, during which I raised the issue of remuneration paid to members of the Board.

As discussed, I am writing to request that the General Assembly reconsider its resolution 56/272 of 27 March 2002, by which it reduced the level of remuneration paid to members of the Board to US$ 1 per year. As outlined in the enclosure to the present letter, the resolution does not take into account article 10 (6) of the 1961 Single Convention on Narcotic Drugs, which states that members of the Board "shall receive an adequate remuneration". The resolution also does not take into account the recommendation of the Secretary-General contained in a report on this subject (see A/53/643), in which he recommended that the remuneration be increased by 25 per cent.

I would be grateful if you could circulate the present letter and its enclosure as a document of the sixtieth session of the General Assembly, under item 124.

The Board trusts that under your able leadership, the Assembly will give adequate consideration to this matter, bearing in mind the aforementioned stipulation of the 1961 Convention.

I would like to thank you again for your support to the work of the Board. The Board looks forward to having the pleasure of exchanging views with you on the occasion of your next visit to Europe.

(*Signed*) Hamid **Ghodse**
President
International Narcotics Control Board

Enclosure

By its resolution 56/272 of 27 March 2002, the General Assembly reduced the level of remuneration paid to members of the International Narcotics Control Board to US$ 1 per year. This was contrary to a recommendation of the Secretary-General contained in a report on the issue (A/53/643 of 5 November 1998). This report had proposed a 25 per cent increase in the remuneration of relevant bodies, including the Board, reflecting both the long period during which the level of remuneration had not been increased. This recommendation was reiterated in a note by the Secretariat (A/56/311 of 21 August 2001 — Annex 2).

The current level of remuneration does not satisfy the requirement laid down in paragraph 6 of Article 10 of the 1961 Convention, which provides that:

> "The members of the Board shall receive **an adequate remuneration** as determined by the General Assembly" (emphasis added).

A legal opinion of the Legal Counsel of the United Nations issued in March 2003 at the request of the Economic and Social Council (see attachment) confirmed the above. While Article 10 of the 1961 Convention states that the amount payable to the members of the Board shall be "determined by the General Assembly", the Legal Counsel states clearly that this determination should be subject to the requirement of adequacy, as provided above. The Legal Counsel concludes that "the reduction to one dollar per year of remuneration payable to members of the INCB may be viewed as not corresponding to the legislative intent of the relevant provision of the 1961 Convention". This opinion is attached as Annex 3.

It should be noted that members of the Board act in their personal capacity and not as Government representatives. Pursuant to paragraph 2 of Article 9 of the 1961 Convention, members of the Board "shall not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions". By this requirement, Board members are not only excluded from holding functions in Government but also from pursuing potentially lucrative careers in the pharmaceutical industry and in any other private or public position that may threaten their independence and be incompatible with the provisions of the Convention. It was in recognition of their exclusion from such functions and the onerous responsibilities entrusted to Board members that the drafters of the Convention adopted the provision contained in article 10 of the Convention.

It should also be noted, as pointed out rightly by the Legal Counsel in his aforementioned opinion, that while debate in the General Assembly, as well as documentation submitted to that body, has traditionally used the term "honorarium" in this context, there is a clear difference between "honorarium" and "remuneration". Black's Law Dictionary defines "remuneration" as "payment, compensation", whereas "honorarium" is a "voluntary reward for that which no remuneration could be collected by law".

The Board believes that it would not be the intention of the General Assembly to violate the terms of a convention to which a large majority of the States represented in the Assembly are party. In fact, of the 191 States members of the General Assembly, 94 per cent are party to the Single Convention.

Attachment

Letter dated 25 March 2003 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, to the President of the Economic and Social Council

I refer to your letter to me of 14 February 2003, whereby you in your capacity of President of ECOSOC requested a legal opinion as to "the appropriateness of the amount of US$1.00 per year being adequate remuneration to be paid to members of the International Narcotics Control Board (INCB)".

While your request refers to a background information note of 29 January 2003 attached to your letter, the history and various aspects of this matter with regard to both the INCB and other organs are set out in greater details in the Report of the Secretary-General entitled "Comprehensive study of the question of honorariums payable to members of organs and subsidiary organs of the United Nations" (A/53/643 of 5 November 1998, hereafter — "the 1998 Report"). In that report, the Secretary-General recommended that the honorariums paid to the members of the organs involved, including the INCB, which had not been revised since 1981, be increased by 25 per cent. That recommendation was reiterated in the note by the Secretariat (A/56/311 of 21 August 2001). However, by resolution 56/272 of 27 March 2002, the General Assembly decided to "set at a level of one United States dollar per year all honorariums currently payable on an exceptional basis to the members" of all relevant organs, including the INCB.

The question, which should be considered in connection with your request, is essentially whether the General Assembly has exercised its authority appropriately when it decided to set at a level of one US dollar per year honorariums payable to the members of INCB.

As stated in paragraph 1 of the 1998 Report, "the basic principle governing the payment of honorariums enunciated by the General Assembly in its resolution 2489 (XXIII) of 21 December 1968 and reaffirmed in its resolutions 3536 (XXX) of 17 December 1975 and 35/218 of 17 December 1980 was that neither a fee nor any other remuneration in addition to subsistence allowances at the standard rate would normally be paid to members of organs or subsidiary organs unless expressly decided upon by the General Assembly". The Assembly has over the years approved the payment of honorariums "in exceptional cases" to members of such organs. In the opinion of the Secretary-General, "the criteria and authority for the payment of honorariums to members of organs and subsidiary organs rests solely with the legislative authority of the General Assembly". (The 1998 Report, paragraphs 58 and 61.)

As to specific amounts paid to members of various bodies, the 1998 Report stated that "the Assembly had approved payment of honorariums to acknowledge **in a token manner** an evidently substantial sacrifice of time or financial interest on the part of their members rather than to attempt to compensate them adequately for their services". (Ibid., paragraph 11, emphasis added.)

The 1961 Single Convention on Narcotic Drugs (hereafter — "the 1961 Convention") stipulates, in relevant parts, as follows:

> "Members of the Board shall be persons, who, by their competence, impartiality and disinterestedness, will command general confidence. During their term of office they shall not hold any position or engage in any activity which would be liable to impair their impartiality in the exercise of their functions." (Article 9, paragraph 2)
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> "The members of the Board shall receive an adequate remuneration as determined by the General Assembly." (Article 10, paragraph 6)

The basic rule of interpretation of international treaties is set out in paragraph 1 of Article 31 of the 1969 Vienna Convention on the Law of Treaties, as follows:

> "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

As far was the 1961 Convention is concerned, its Article 10 clearly states that the amount payable to the INCB members shall be "determined by the General Assembly". However, the same Article specifies that the General Assembly is required to determine not just an abstract amount, but rather "an adequate remuneration" payable to the INCB members.

It is pertinent to recall that the term "remuneration" is defined as "payment, compensation".[1] The term "honorarium" is defined as follows: "1. A payment of money or anything of value to a person for services rendered for which fees cannot legally be or are not traditionally paid ... 2. A voluntary reward for that for which no remuneration could be collected by law; a voluntary donation in consideration of services that admit of no compensation in money."[2]

Thus, while in relevant debate in, and documentation submitted to, the General Assembly, a term "honorarium" is traditionally used, there is an obvious difference in the legal meanings of the two terms involved.

The drafters of the 1961 Convention have qualified "remuneration" with the term "adequate". The definition of this term per se[3] does not provide a precise legal guidance for the purposes of this review. However, especially in view of Article 10, it appears that the intention of the drafters of the 1961 Convention was that the INCB members should be entitled to receive more than just a symbolic sum of one US dollar annually.

Furthermore, as indicated above, Article 9 of the 1961 Convention requires that members of the INCB, during their term of office, must not hold "any position or engage in any activity" which would be incompatible with their status. It appears that the provision on adequate remuneration might be relevant to the above requirement. It may be argued that, in the view of the drafters, "adequate remuneration" envisaged in Article 10 is intended to compensate, at least partially, the loss of income resulting from restrictions established in Article 9 of the 1961 Convention.

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[1] Black's Law Dictionary, Seventh Edition, 1999, page 1298.

[2] Ibid., page 741.

[3] The accepted legal definition of "adequate" is "legally sufficient". (Black's Law Dictionary, Seventh Edition, 1999, page 40.

In this respect, it is worth recalling that the President of the INCB indicated back in 1975 that an "adequate remuneration" pursuant to Article 10 of the Convention is one that "compensates the loss of income resulting either from the incompatibilities established under Article 9 of the 1961 Convention for INCB members or for the time they have to devote to the performance of their functions ..." (A/C.5/31/2 of 15 June 1976). I also note that, as reflected in the above-mentioned attachment to your letter, the President and the members of the INCB consider that "any determination by the General Assembly concerning the amount of remuneration will have to satisfy the norm of adequacy, which is a specific requirement of the [1961] Convention".

In the light of the foregoing, it is my view that the reduction to one dollar per year of remuneration payable to members of the INCB may be viewed as not corresponding to the legislative intent of the relevant provision of the 1961 Convention.

However, the picture is more complex than that, due to the way in which the General Assembly has dealt with the matter in the past. As indicated in the 1998 report, the position of the General Assembly over the years has been that it approves payment of honorariums, on an exceptional basis, to acknowledge "in a token manner" a sacrifice of time or financial interest on the part of the members of organs involved rather than to attempt to compensate them adequately for their services. From this perspective, reducing an honorarium to one dollar per year does not affect the "token" character of the honorarium and, thus, corresponds to the practice, which evolved in the General Assembly over the years.

Furthermore, in the 1998 Report the Secretary-General recalled that, on one of previous occasions, he stated that, "at the time of the creation of the various bodies, he had not been involved in developing those decisions nor was he advised of the rationale for the payment of honorariums. The role of the Secretary-General in the process was limited to keeping the rates of honorariums under review and reporting thereon to the General Assembly when, in his judgement, their revision might be warranted" (paragraph 12). For the same reasons, it is difficult for the Office of Legal Affairs to provide a more definitive opinion on the subject mater of your request.

Finally, this legal opinion does not concern other organs mentioned in the 1998 Report.

(*Signed*) Hans **Corell**
Under-Secretary-General for Legal Affairs
The Legal Counsel